IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 606 of 1985

For Approval and Signature:
***HONOURABLE* MS. JUSTICE R.M.DOSHIT**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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KEDARNATH KUNJILAL AGRAWAL - Appellant(s)

Versus

GUJARAT STATE ROAD TRANSPORT CORPORATION & 3 - Defendant(s)

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Appearance :
MR SK BUKHARI for Appellant
MS MAYA DESAI for MR MD PANDYA for Defendant(s) : 1,
NOTICE SERVED for Defendant(s) : 2,
MR AMIT V THAKKAR for Mr SH SANJANWALA for Defendant(s) : 3,
MR CHETAN PANDYA for Mr SV RAJU for Defendant(s) : 4,

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT
15th October, 2007

ORAL JUDGMENT

This Appeal, preferred under Section 110D of the Motor Vehicles Act, 1939 [hereinafter referred to as, "***the Act***"] by the claimant in the Motor Accident

Claim Petition No. 616 of 1982, arises from the judgment and award dated 18th May, 1984 passed by the Motor Accident Claims Tribunal, Surat [hereinafter referred to as, "***the Tribunal***"]. By the *impugned* award, the appellant claimant has been awarded compensation of Rs. 34,000/= with interest @ 6% *per annum*. The Award has been passed against the opponent nos. 3 & 4, the respondent nos. 2 & 3 in the present appeal, the driver and the owner of the offending vehicle bearing registration no. GTK-4693. The appellant has challenged the *impugned* award with respect to the amount of compensation awarded and also with respect to the liability of the respondent no.4-Insurance Company, the insurer of the offending truck.

On 3rd September, 1982, the claimant was travelling aboard the GSRTC bus bearing registration No. GRS-7511 en-route village-Vihara to Olpad. The claimant had boarded the bus at village Vihara. After travelling for a few minutes from Andhi bus stop, near a culvert, an on-coming truck – the offending vehicle collided with the bus on the right hand middle of its body. After striking the bus, the truck

continued to move further and landed into a ditch. In the said collision, the claimant suffered injuries for which he had to take long drawn treatment. The claimant also suffered permanent partial disability.

The claimant filed claim petition no. 616 of 1982 before the Motor Accident Claims Tribunal, Surat for compensation in the sum of Rs. 50,000/=. According to the claimant, he was around 42 years of age; he had a retail shop at village-Vihara; he had suffered compound inter-condular fractures of right humerus; fracture of right radius; and right ulna. He was operated in emergency. Nails were inserted to repair the fractures. He had to undergo bone grafting operation and subsequently had to undergo operation for removal of the nails. He suffered permanent partial disability to the right upper limb. The movement of the right elbow was restricted to around forty per cent. He suffered wasting of the muscles of the upper and fore arm and post traumatic osteoarthritis of right elbow joint. In the opinion of the doctor, the overall permanent partial disability was to the extent of 22 per cent. The movement of the right hand was restricted. Lifting of

weight by the right hand was not possible. Considering his age of 42 years, the multiple fractures suffered by him, the long and painful medical treatment, and the permanent partial disability suffered by him, the learned Tribunal has awarded compensation in the sum of Rs. 34,000/=. The loss of future income is calculated at Rs. 12,000/=. A sum of Rs. 10,000/= has been awarded for medical expenses. A sum of Rs. 12,000/= has been awarded for the injuries suffered by the claimant.

On examination of the panchnama and the oral evidence of the eye witness, the learned Tribunal held that the driver of the offending vehicle – the truck – was wholly responsible for the accident in question. It is not disputed that the offending vehicle was insured by the respondent no. 4-Insurance Company. The Insurance Company, however, raised the defense that the driver of the offending truck did not hold valid license to drive the truck. The Insurance Company was, therefore, not liable to indemnify the insured – the owner of the truck – for the third party liability incurred by him. The defence was accepted by the Tribunal. The Tribunal

observed that the driver of the truck possessed a "*heavy motor vehicle*" license. While he was driving a transport vehicle – a public carrier. The owner of the truck had committed breach of the terms and conditions of the insurance policy in allowing the truck driver to drive the truck, a transport vehicle, without a valid license to drive such vehicle. In the result, the insurance company was absolved from its liability against the third party liability and consequently for the compensation awarded to the claimant. Therefore, the present Appeal.

Mr. Bukhari has assailed the judgment and the award passed by the Tribunal. He has submitted that considering the evidence on record, the Tribunal has erred in not awarding the compensation in the sum of Rs. 50,000/=. The Tribunal has erred in adopting the multiplier of 10 years and in assessing the loss of future income at Rs. 100/= a month. He has also assailed the finding that the truck driver did not possess a valid license. He has submitted that admittedly the driver possessed a valid license for "*heavy goods vehicle*". The offending vehicle was necessarily a heavy goods vehicle. The insurance

company could not have been absolved from its liability on a hyper technical ground that the truck driver did not possess a valid license for driving a transport vehicle. In support of his submissions, Mr. Bukhari has relied upon the judgment of the *Hon'ble* Supreme Court in the matter of ***National Insurance Company Limited v. Swaran Singh & Ors.*** [(2004) 3 SCC 297]; and of Patna High Court in the matter of ***Oriental Insurance Company Limited v. Shiv Narain Sahani & Ors.*** [2007 ACJ 1640].

The Appeal is contested by Mr. Thakkar and Mr. Pandya. Mr. Thakkar has contested the Appeal in so far as the claimant has prayed for enhancement of the compensation. He, however, has supported the Appeal in so far as the insurance company has been absolved from its liability in respect of the compensation awarded to the claimant. Mr. Pandya has appeared for the insurance company. He has supported the judgment of the Tribunal. He has submitted that the Tribunal has rightly absolved the insurance company from its liability in respect of the compensation awarded to the claimant.

As to the accident in question, there is no

dispute that the accident did occur and the claimant received injuries in question in the said accident. It is also not in dispute that the accident occurred on account of negligence of the truck driver. It is borne out from the record that while travelling to Surat, after stopping at Andhi Bus-stand, the ST bus had travelled for some four or five minutes. Coming nearer to the culvert, the bus driver slowed down the speed of the bus, awaiting for the on-coming truck to pass by, he took the bus to the extreme left on kachchha shoulder. Nevertheless, the truck collided with the bus on its right side in the middle of its body, went further and landed into a ditch on the right side of the road. There is no gain-saying that the offending truck was driven rashly and negligently at an excessive speed. The finding that it was the driver of the offending truck, who was solely responsible for the accident in question requires to be confirmed.

As to the amount of compensation, I do agree with Mr. Bukhari that the compensation awarded to the claimant is bit conservative. Though the Tribunal has awarded a sum of Rs. 12,000/= for the injuries

suffered by the claimant, the Tribunal has erred in not awarding any compensation for the actual loss of income. It should be noted that the claimant had suffered grievous injuries. He had suffered multiple fractures of several bones of the right hand. The use of the right hand during the treatment was out of question. The claimant had to take a long drawn treatment : first to repair the fractures, then for bone grafting and then for removal of the nails. Thus, it can fairly be estimated that the claimant could not attend his business for around six months. He had deposed that he was earning about Rs. 8,000/= a year from his retail business. I am, therefore, of the opinion that the claimant ought to have been awarded a sum of Rs. 4,000/= for actual loss of income. Considering the fact that the claimant had a retail business and that he had suffered permanent disability in the right hand elbow, his business would certainly be adversely affected on account of the said debility. Considering the permanent disability suffered by him, the annual loss of future income can fairly be estimated at Rs. 2,000/=. In that case, considering the 10 years' multiplier

adopted by the Tribunal, the claimant would be entitled to compensation of Rs. 20,000/= for loss of future income.

In above view of the matter, I am of the opinion that the claimant was entitled to compensation in the sum of Rs. 46,000/= including the sum of Rs. 12,000/= for the injuries suffered by him and the sum of Rs. 10,000/= towards medical expenses incurred by him.

As to the liability of the insurance company, it is not disputed that at the relevant time, the driver of the offending truck did possess a valid license for heavy goods vehicle. The relevant portion of the insurance policy read as under :-

> **“Any of the following :-**
> **[1] The insured;**
> **[2] Any other person provided he is in the insured's employ and is driving on the insured's order or with his permission.**
>
> **Provided that the person driving holds a valid driving license at the time of the accident or had held a permanent driving license [other than a learner's license] and is not disqualified from holding or obtaining such a license.”**

It shall be noted that the said term did not specify the type of license i.e, the license to drive

"heavy goods vehicle" or *"transport vehicle"*. The *"transport vehicle"* is defined in clause 33 of Section 2 of the Act to mean, *"a public service vehicle or a goods vehicle."* ***"Public Service Vehicle"*** is defined in clause 25 of Section 2 of the Act to mean, ***"any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a motor cab, contract carriage, and stage carriage."*** ***"Goods vehicle"*** is defined in clause 8 of the said Section 2 to mean, ***"any motor vehicle constructed or adapted for use for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods solely or in addition to passengers"***. ***"Heavy goods vehicle"*** has been defined in clause 9 of Section 2 of the Act to mean, ***"any goods vehicle the registered laden weight of which or a tractor the unladen weight of which, exceeds 11,000 kilo grams***."

Considering the aforesaid definitions, I am of the opinion that *any "goods vehicle"*, *"heavy goods vehicle"* or *"public service vehicle"* can be commonly called as *"transport vehicle"*. In other words, the heavy goods vehicle is not different from a transport

vehicle. Any person possessing a driving license for a transport vehicle can be said to hold a valid license to drive either a goods vehicle or a public service vehicle. The offending truck was necessarily a heavy goods vehicle *within* the meaning of clause 9 of Section 2 of the Act. The driver of the offending truck thus possessed a valid license to drive the offending truck. In my opinion, the Tribunal has erred in distinguishing the "*transport vehicle*" from a "*heavy goods vehicle*" without considering the above referred statutory definitions appearing in the Act. The Tribunal has thus erred in absolving the Insurance Company from its liability in respect of the compensation awarded to the claimant.

For the aforesaid reasons, the Appeal is allowed with cost. The appellant do recover compensation in the sum of Rs. 46,000/= from the respondents no. 2, 3 and 4 jointly and severally. The Award in respect of interest is confirmed.

The Award be accordingly modified.

{Ms. R.M Doshit, J.}

*Prakash**